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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,978	09/27/2003	Daniel H. Katsin	602.06	3513

7590 01/08/2009  
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EXAMINER
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JOHNSON, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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01/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 24, 3008 has been entered.

### ***Response to Amendment***

2. The Amendment submitted on September 24, 2008, has been entered. Claims 10 and 14 - 16 have been cancelled. Claims 5, 11, 12, 13, 17, and 18 have been amended. Therefore, the pending claims are 1 - 9m 11 - 13, and 17 - 24. Claims 1 - 4, 8, 9, and 19 - 24 are withdrawn from consideration as being drawn to a nonelected invention.

3. The amendment to claims 5 and 13 are sufficient to overcome the 35 USC 103 rejection based on DeMott et al. (6,770,581) in view of Keck et al. (2203/0106568 A1) since DeMott et al. fails to teach outer fabric layers which consist of split microfiber, but requires the fabric layers include monofilament ground yarns having a denier of at least 10 (column 4, lines 45 - 60). Further, DeMott and Keck fail to teach using split microfibers which as argued by the applicant would have surface irregularities formed on the surface of the fibers when they split (response, page 9). Finally, DeMott fails to teach bonding the three layers such that the outer two layers are bonded together, absent the middle layer, in certain locations, and the two outer layers and the middle layers are all bonded together so that the middle layer mediates the transport of moisture between the two outer layers.

### ***Allowable Subject Matter***

4. The following is an examiner's statement of reasons for allowance: The prior art fails to teach or fairly suggest a three layer composite as claimed, comprising three separate fabric layers wherein the

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outer two fabric layers consist of a split microfiber with furrows and channels to create capillary action and void space with a third layer consisting of a moisture mediator between portions of the outer two layers, wherein the outer two layers are coupled in a face-to-face relationship in portions of the fabric and the outer two layers are coupled together with the middle layer between them in other portions of the fabric such that the middle layer mediates the transport of moisture from the outer two layers, and the layers are coupled together such that the layers remain separate and distinct from each other except at limited points of contact where the layers are fixed together. While the prior art discloses fabrics which consist of split microfibers, the prior art fails to teach combining these microfibers cloths with additional microfiber layers and mediating layers to control the transport of moisture between the layers. Further, the prior art fails to teach coupling the layers together in a manner such that the outer layers are attached directly to each other in certain locations, and the outer layers are attached to the middle layer in other locations.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Thus, claims 5 - 7, 11, 12, and 13 - 18 are allowable.

***Election/Restrictions***

6. Claims 5 - 7, 11, 12, and 13 - 18 are allowable. The restriction requirement between claims 5 - 7, 11, 12, and 13 - 18 and claims 8 and 9, as set forth in the Office action mailed on July 15, 2005, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 8 and 9, directed to an embodiment with a moisture resistant middle layer, which depend from generic claim 5, are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However, claims 1 - 4, directed to a two-layered

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composite fabric, and claims 19 - 24, directed to a three-layered composite fabric with a moisture-resistant middle layer, are withdrawn from consideration because they do not require all the limitations of an allowable claim. It is noted that if claims 19 - 24 are rewritten to include the limitations of claim 5, these claims would also be rejoined with the pending claims and allowed.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

7. This application is in condition for allowance except for the presence of claims 1 - 4 and 19 - 24 directed to an invention non-elected with traverse in the reply filed on August 8, 2005. Applicant is given ONE MONTH or THIRTY DAYS from the date of this letter, whichever is longer, to cancel the noted claims or take other appropriate action (37 CFR 1.144). Failure to take action during this period will be treated as authorization to cancel the noted claims by Examiner's Amendment and pass the case to issue. Extensions of time under 37 CFR 1.136(a) will not be permitted since this application will be passed to issue.

The prosecution of this case is closed except for consideration of the above matter.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlj  
January 5, 2009

/Jenna-Leigh Johnson/  
Primary Examiner, Art Unit 1794